IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 949 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARMAR SANJAYKUMAR GANPATLAL & 1 - Petitioner(s)
Versus
LIFE INSURANCE CORPORATION OF INDIA & 1 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1 - 2.
MR AK CLERK for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 28/03/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr. PK Jani for the petitioner and Mr. AK Clerk for the respondent-LIC of India.
2. Grievance of the petitioner is that the

application of the petitioner for appointment on compassionate ground has not been considered and rejected by the respondents and based upon such grievance, petitioner has filed this petition.

3. Learned Advocate Mr. Clerk who is appearing for the respondent Corporation has filed detailed affidavit in reply to this petition, inter alia, denying the contentions raised by the petitioner. Relevant para 4, 5 and 6 therefrom are reproduced as under:

“4. I say that the petitioner No.1 is the brother of Dineshkumar Ganpatlal Parmar who was employed by the respondent Corporation and petitioner No.2 is the father of the said Shri Dineshkumar. Neither petitioner No.1 as brother nor petitioner NO.2 as father is eligible for compassionate appointment in the respondent Corporation as per the LIC Recruitment (of Class III and Class IV Staff) Instructions, 1993.Instruction NO. 21 which pertains to relaxation in favour of near relatives of an employee who dies while in service is reproduced and annexed herewith and marked Annexure 'I'. As per these instructions which are having the force of law only spouse, son or unmarried daughter of the employee is eligible for compassionate appointment. Therefore, the petitioners are not eligible for compassionate appointment in the respondent Corporation. Therefore, they cannot be granted compassionate appointment.

5. It is submitted that since the petitioners are not eligible for compassionate appointment as per the Instructions prevailing in the matter of compassionate appointment, no relief as prayed for in the petition can be granted to the petitioners.

6. It is submitted that since the petitioners are not eligible as per the Instructions governing the subject matter of compassionate appointment, even assuming while not admitting that the petitioner NO.2 was dependent on the deceased or that petitioner No.1 is the youngest son of petitioner NO.2 is not relevant or material."

4. One more, further affidavit in reply is also filed by the Respondent Corporation wherefrom it appears that the petitioner has been paid in all, an amount of Rs.17,74,765.56. These facts have been narrated by the deponent in his further affidavit in reply filed on behalf of the Corporation at para 1 and 2 page 47 which are reproduced as under:

"1. I say that Ganpatbhai Savjibhai Parmar petitioner NO.2, who is the father of the deceased was paid the terminal dues of the deceased employee as under:

Gratuity	350000.00
PLLI	4517.00
GSLI	305146.00
Encashment of PL	151848.00
Addl. Gratuity	15246.00
GTI	240000.00
Salary Diff.	149021.94

PF & Add. PF	62062.00		
Cash Medical	3600.00		
Total (A)	1281440.00		
Recovery Licence fees	522.00		
Net Payment A		1280918.94	made as on 5.5.05
Final payment of PF Settle by ZO (B)		4,01,759.00	on 23.8.05
Wage Revision ©			
Diff. Of salary	56184.42		
Diff. Of PL Encashment	19697.20		
PF	16206.00		
Total (C)		92087.62	
Grand Total (A+B+C)		1774765.56	

2. It is submitted that since the petitioners are not eligible as per the instructions covering the compassionate appointment even assuming while not admitting that petitioner NO. 2 was dependent of the deceased, the petitioner NO.2 i.e. The father of the deceased employee has been paid an amount of Rs.1774765.56. It is submitted that therefore the father of the deceased cannot be said to be in need of compassionate appointment on the ground of financial condition. It is submitted that the petitioners have not disclosed the above facts before this Hon'ble Court. “

5. Rejoinder to the affidavit in reply has been filed by the petitioner and the same is on record.

6. Recently, this aspect has been considered by the

apex court in State Bank of India v. Jaspal Kaur, reported in JT 2007 (3) SC 35 as well as in case of State Bank of India & Anr. v. Somvir Singh, JT 2007 (3) SC 398. Relevant observations made by the apex court in case of SBI & Ors. v. Somvir Singh, JT 2007 (3) SC 398 at page 399 are reproduced as under:

“Held:

In our considered opinion the High Court itself could not have undertaken any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself is whether the decision making process rejecting the claim of the respondent for compassionate appointment is vitiated? Whether the order is not in conformity with the scheme framed by the appellant Bank? It is not even urged that the order passed by the competent authority is not in accordance with the scheme. It is well settled that the hardship of the dependent does not entitle one to compassionate appointment de hors the scheme or the st statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant bank.

It is not a case where the dependents of deceased employee are left 'without any means of livelihood' and unable to make both ends meet.The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant bank that the respondent was not living hand to mouth. As observed by this Court in **General Manager (D & PB) and others v. Kunti Tiwary and anr.,[2004 (7) SCC 271]**, the High Court cannot dilute the criteria of 'penury' to one of 'not very well to do'. The view taken by the Division Bench of the High Court may amount to varying the existing income framed by the appellant Bank. Such a course is impermissible in law (para 13). For all the aforesaid reasons, we alow the appeal filed by the appellant bank and set aside the order passed by the Division Bench of the High Court of Punjab and Haryana. There shall be no order as to costs. “

7. In view of the aforesaid decisions and in light of the aforesaid decisions of the Hon'ble Supreme Court of India, and considering the financial conditions of the petitioner which is sound looking to the amounts received by petitioner from the LIC of India, petitioner is not eligible for the appointment on compassionate ground according to the scheme of the LIC of India. Therefore, according to my opinion, petitioner is not entitled for such appointment on compassionate ground and, therefore, there is no substance in this

petition and same is, therefore, dismissed. Notice is discharged.

(H.K. Rathod,J.)

Vyas